of service. *Held*, that a demurrer on that ground should have been overruled. *Howell* v. *Howell*, 78 S. E. 222 (N. C.).

Originally a father's action for the abduction of a child seems to have included only cases of abduction of an heir, in whose marriage he had a valuable right. See 3 BL. COM. 140; *Barham* v. *Dennis*, Cro. Eliz. 770. Subsequently he was allowed an action for injury to his parental rights by the fiction, *per quod servitium amisit*. *Tullidge* v. *Wade*, 3 Wils. 18. See also *Norton* v. *Jason*, Styles 398; *Russell* v. *Corne*, 2 Ld. Ray. 1032. American courts have recognized a right of recovery for the expense of caring for an injured child on the ground of his obligation to care for his offspring. *Dennis* v. *Clark*, 2 Cush. (Mass.) 347; *Contra*, *Grinnel* v. *Wells*, 7 M. & G. 1033. See *Hunt* v. *Wotton*, T. Ray. 259, 260. With this exception protection of his parental rights is extended to him as master rather than as father. *Whitbourne* v. *Williams*, [1901] 2 K. B. 722. English courts, though recognizing this rule as a mere fiction, have at times applied it stringently. *Grinnel* v. *Wells*, *supra*; *Hamilton* v. *Long*, [1903] 2 I. R. 407, [1905] 2 I. R. 552. American decisions are more liberal. *Martin* v. *Payne*, 9 Johns. (N. Y.) 387; *Parker* v. *Meek*, 3 Sneed (Tenn.) 29; *Magee* v. *Holland*, 27 N. J. L. 86. Universal recognition of the injury to parental rights as the basis for assessing damage lessens the injustice but not the absurdity of the fiction. *Bedford* v. *McKowl*, 3 Esp. 119; *Phelin* v. *Kenderdine*, 20 Pa. 354. Even courts that go far in deploring the technicality still feel themselves bound by it. *Washburn* v. *Abram*, 122 Ky. 53, 90 S. W. 997. The principal case is a distinct step forward. Two jurisdictions have like rules. *Kirkpatrick* v. *Lockhart*, 2 Brev. (S. C.) 276; *Anthony* v. *Norton*, 60 Kan. 341, 56 Pac. 529. In another the rule is statutory with regard to actions for seduction. HOW. ST. (Mich.), 2 ed., 13133.

PARTNERSHIP — RIGHTS AND REMEDIES OF CREDITORS — DISTRIBUTION OF ASSETS OF INSOLVENT PARTNERSHIP AND INSOLVENT DECEASED PARTNERS. — Two partners died insolvent and the partnership was also insolvent. In the probate court the question arose as to the distribution of the assets of the insolvent estates. *Held*, that the partnership creditors be preferred as to partnership assets and share equally with the separate creditors in the distribution of the separate estates. *Robinson* v. *Security Co.*, 87 Atl. 879 (Conn.).

The principal case departs from the general common-law rule, which is that partnership assets are to be distributed among partnership creditors and separate assets among separate creditors, and the excess of either estate is to be applied to the deficiencies of the other. See *In re Wilcox* (D. C.), 94 Fed. 84. But the general rule neither attains justice nor is it to be supported on any logically developed theory. *Camp* v. *Grant*, 21 Conn. 41. See 18 HARV. L. REV. 495; 20 HARV. L. REV. 589, 591. The general rule seems to be another of the numerous compromises between the mercantile or entity theory of partnership and the common-law or aggregate theory. If the aggregate theory were followed consistently, the obligations of partnership being merely joint obligations of the several partners, the rule of distribution would be that both partnership creditors and the separate creditors of the individual partners would share equally as well in the separate estates of the partner as in the partner's share of the partnership assets. If we follow the entity theory we reach the result of the principal case, since the firm would be primarily liable to the partnership creditors and the partners individually would be sureties. See article by Brannan, 20 HARV. L. REV. 589, 591; CORY, ACCOUNTS, 2 ed., 124; LINDLEY PARTNERSHIP, 8 ed., 815. The mercantile theory is the result of convenience, logic, and experience, while the common-law theory is a derivative of an imperfect Roman law analogy. See 24 HARV. L. REV. 591, 603. Therefore the latter often breaks down where the two conflict. Thus it would seem that the solution of these difficulties is only to be found by dropping the mask and expressly adopting the entity

theory. 57 CENT. L. J. 343; 2 JURIDICAL SOCIETY PAPERS, 40; 20 HARV. L. REV. 589. The only sound objection to the rule of the principal case is a practical one, in that it differs from that of the Federal Bankruptcy Act which adopts the common-law or English rule. Act July 1, 1898, c. 541, sec. 5, 30 Stat. 547. Thus the rule of distribution would depend upon whether the estates were being settled in the state or the federal court. This objection was thought fatal in England under similar circumstances. *Grey* v. *Chiswell*, 9 Ves. 118. But since the principal case is a step toward establishing a theory of partnership in accordance with the true facts and at the same time achieves a more just result, it would seem worthy of being followed in spite of the conflict it may create.

PATENTS — INFRINGEMENTS — RIGHT OF SUB-PURCHASER TO DISREGARD NOTICE LIMITING RESALE PRICE. — The purchaser of a patented article from a jobber disregarded a notice, put on the article by the patentee, to the effect that it was not to be resold below a certain price. *Held*, that there was no infringement of the patent. *Bauer & Cie* v. *O'Donnell*, 33 Sup. Ct. Rep. 616.

This case is commented upon in this issue of the REVIEW on p. 73.

POST OFFICE — USE OF MAILS FOR FRAUDULENT PURPOSE — WHETHER ACTUAL INTENT TO DEFRAUD ADDRESSEE IS REQUIRED. — The defendant sent through the mails a catalogue advertising and soliciting orders for loaded dice and marked cards. He was indicted under a statute providing punishment for anyone who, having devised a scheme to defraud, should for the purpose of executing such scheme place any letter or advertisement in the post office. Act March 4, 1909, c. 321; PEN. CODE, § 215; 35 STAT. AT LARGE, 1130. *Held*, that a demurrer to the indictment should be sustained. *Stockton* v. *United States*, 205 Fed. 462 (C. C. A., Seventh Circ.).

The court argues that the legislature did not intend the general language of the above section to cover the defendant's offense, because an amendment to the statute as originally framed has made punishable any scheme to use the mails for disposing of counterfeit money or certain other specified artifices which would enable the purchaser to commit a fraud. But an order by mail to sell counterfeit money was punishable under the statute before amendment. *United States* v. *Jones*, 10 Fed. 469. In a case to the contrary, relied on by the court in the principal case, the decision turned upon a defect in the indictment, which charged a scheme to defraud the man who bought the counterfeits, instead of, as was the case, those who might deal with him. *Milby* v. *United States*, 109 Fed. 638. See *Milby* v. *United States*, 120 Fed. 1, 2. The amendment did not curtail the original statute, but simplified the course of conviction for the specified offenses. *Streep* v. *United States*, 160 U. S. 128; *Culp* v. *United States*, 82 Fed. 990. See *Milby* v. *United States*, 120 Fed. 1, 4. Since it is impossible to conceive that the vendor in the principal case had no intention to defraud, the result seems contrary to reason as well as authority.

RECEIVERS — EFFECT OF RECEIVERSHIP ON RELATION OF AGENTS TO COMPANY. — The plaintiff sued the defendant railroad for injuries received before the railroad passed into the hands of receivers. A statute provided that in actions against railroads, process could be served on any of their station or ticket agents. After the receivership, process was served by the plaintiff on a station agent, an employee of the railroad retained by the receiver. *Held*, that the service was valid against the railroad. *Ennest* v. *Pere Marquette R. Co.*, 142 N. W. 567 (Mich.).

The appointment of a receiver might have one of two possible effects upon the relation of employees to the railroad. They may be held to be agents of the receiver only. *Cain* v. *Seaboard, etc. Ry.*, 7 Georgia App. 461, 67 S. E. 127.